
(2012) 03 AHC CK 0185
In the Allahabad High Court
Case No : Writ A. No. 11421 of 2011

Prem Chand Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Civil Services (Main) Examination Rules, 2007 — Rule 14, 4

Citation : (2012) 3 ADJ 781

Hon'ble Judges : Sunil Ambwani, J; Manoj Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon'ble Manoj Misra, J.—These two petitions of the same petitioner raises a short question that is, whether a candidate, who does not disclose correctly the number of attempts that he has taken in a competitive examination, in addition to the cancellation of his candidature for the concerned examination, could be debarred for a further period of 10 years from all the examinations to be conducted and selections to be made by the Public Service Commission.

2. The facts, in brief, are that the petitioner, who belongs to OBC category, was entitled to take 7 attempts in the Civil Services Examinations conducted by the Union Public Service Commission. For his candidature for the Civil Services (Pre) Examination, 2007 the petitioner was required to disclose the number of attempts that he had already taken. The petitioner in his application had disclosed that he had already taken six attempts. Thereafter the petitioner appeared in the Civil Services (Pre.) Examination, 2007, and was successful.

3. After qualifying the preliminary examination, the petitioner submitted his application form for the Civil Services (Main) Exam, 2007. In the application form for the Main Examination the petitioner was required to submit information to the queries, which are as follows:

(A) Column No.25 (a)- "How many times have you appeared at the Civil Services (Preliminary) Examination held in 1979 and thereafter including the current Examination held in May, 2007.

(Write 1,2,3,4,5.....etc in the opposite box as the case may be)."

(B) Column No.25 (b)- "If you have already appeared at the Civil Services (Preliminary) Examination held by the UPSC in 1979 or thereafter write in boxes opposite the year or years of examination in which you appeared thereat in ascending chronological order."

(C) Column 27-

"Particulars of U.P.S.C Examination/Recruitments by Selection applied for / appeared (including the Civil Service Examination)

Name of Examination/ Post

Month and year of examination/ Advt. No./Item No. for Recruitment

Roll No.

Whether you appeared at the Examination/ Interview

Whether you were recommended for appointment

4. The petitioner in response to the query in column 25(a) mentioned 7; and in response to the query in column 25 (b) mentioned "01, "02, "03, "04, "05, "06 and "07, meaning thereby that he appeared in the examinations of the years 2001, 2002, 2003, 2004, 2005, 2006 and 2007. Whereas, column 27 was left blank by the petitioner.

5. The petitioner thereafter gave Civil Services (Main) Examination, 2007. His result, however, was not declared and instead a show cause notice dated 26.02.2008 was issued by the Under Secretary to the Union Public Service Commission, thereby calling for an explanation from the petitioner as to why action should not be taken against him under Rules 4 and 14 of the Rules for the Civil Services (Main) Examination, 2007 for giving incorrect / incomplete information with regards to the attempts that the petitioner had taken in the Civil Services Examinations held by the Union Public Service Commission. In the notice it was stated that against Column 25 (a), the petitioner had mentioned the number of attempts as 07 and the indicated years against Column No.25 (b) were mentioned as 2001, 2002, 2003, 2004, 2005, 2006 and 2007 whereas the information required by Column No. 27 was not provided. The notice stated that upon verification of the records it was found that the petitioner had already taken 7 attempts prior to the attempt in the year, 2007 and that the years in which the attempts were taken were 1999, 2000, 2002, 2003, 2004, 2005 and 2006 whereas, the information given by the petitioner that he had taken an attempt in the year 2001 was not found corroborated from the records. Accordingly, it was stated in the notice, as follows:

(a) You, therefore, seem to have knowingly suppressed in your application the information regarding your previous candidature for the Civil Services (Pre) Examination held in 1999 & 2000; (b) Made mis-statements in your application regarding your previous candidature above in order to gain unauthorized admission to the Civil Services Examination, 2007.

6. The petitioner, in response to the aforesaid show cause notice, submitted a reply on 06.03.2008 stating therein that the wrong information was given due to inadvertent mistake / forgetfulness on his part and that he would never commit such a mistake in future.

7. The Under Secretary to the Union Public Service Commission, by his letter dated 28.03.2008, informed the petitioner that the reply of the petitioner to the show cause notice was not found acceptable, and that the Union Public Service Commission has, therefore, decided to cancel his candidature for the Civil Services Examination, 2007, and to debar the petitioner from appearing in all the examinations to be conducted and selections to be made by the Commission for a period of ten years with effect from 24.03.2008.

8. The petitioner challenged the aforesaid decision of the Union Public Service Commission by means of Writ Petition No. 14859 of 2010. This writ petition, however, was dismissed on the ground that the petitioner had alternative remedy to approach the Central Administrative Tribunal.

9. Consequent to the dismissal of the Writ Petition No. 14859 of 2010, the petitioner filed Original Application No. 653 of 2010 before the Central Administrative Tribunal, Allahabad u/s 19 of the Administrative Tribunals Act, 1985.

10. Before the Central Administrative Tribunal, the only ground that was pressed by the petitioner was that he had no malafide intention to mislead the Commission while furnishing the information in the application form. The petitioner claimed that the incorrect information submitted in the application form was due to an inadvertent error on his part, therefore, the penalty imposed by the Commission was disproportionately harsh.

11. The Central Administrative Tribunal after quoting Rules 4 and 14 of the Rules of the Civil Services (Main) Examination, 2007 held that the applicant, as a candidate belonging to the other backward class, was entitled to have 7 attempts including the one in which he was appearing. Since the applicant had already availed 7 chances excluding the attempt in question, therefore, the Commission was justified in cancelling the candidature and passing the order of debarring him from appearing in the examinations conducted by the Union Public Service Examination for a period of ten years. With the aforesaid observations, the original application of the petitioner was dismissed by the Central Administrative Tribunal by its judgment and order dated 21.12.2010.

12. Aggrieved by the order of the Central Administrative Tribunal, the petitioner

has filed Writ Petition No. 11421 of 2011. The other petition, namely, Writ Petition No. 14861 of 2010 has been preferred by the petitioner against the U.P. Public Service Commission for their decision dated 28.06.2001, which is as follows:-

13. By its decision dated 28.06.2001, the U.P. Public Service Commission had resolved that whenever a candidate is punished by either the Union Public Service Commission or any other State Public Service Commission for giving incorrect information or for using unfair means, then the same punishment would also apply to all the examinations that are conducted by it. Meaning thereby that if a candidate has been debarred from appearing in any examination for a certain specified period by either the Union Public Service Commission or any other State Public Service Commission then he would also be debarred for the said period from appearing in any of the examinations conducted by the U.P. Public Service Commission. As a result of this decision, the candidature of the petitioner with respect to several other examinations conducted by the U.P. Public Service Commission was jeopardized. The details of the examinations conducted by the U.P. Public Service Commission, in which the petitioner had appeared as a candidate, are mentioned in paragraph No.29 of the writ petition. The same is being reproduced below:-

The details of such examinations in which the petitioner is an applicant are specified below;

(i) Combined Lower Subordinate Services Examination 2009 notified by Advertisement No. A-2/E- 1/2009 published in the newspaper Rozgar Express. The relevant extract of which is annexed and marked as Annexure No.12 to this writ petition. The selection so notified comprises of a preliminary examination, the mains written examination and interview. None of the said examinations has been held as yet.

(ii) Combined State Services/Upper Subordinate (Preliminary) Examination 2009 notified by Advertisement No... A-1/E-1/2009 published in Rozgar Express. The relevant extract of which is annexed and marked as Annexure No.13 to this writ petition. The preliminary test has already taken place on 13.12.2009 and the result thereof is awaited.

(iii) Combined Lower Subordinate Preliminary Examination 2008 (Special Recruitment) and Combined Lower Subordinate Preliminary Examination 2008. The said examinations have been notified by Advertisement No. A-3/ E-1/2008 published in Employment News. The relevant extract of which is annexed and marked as Annexure No.14 to this writ petition. The said selection comprises of a preliminary examination, mains examination and interview.

(iv) Naib Tehsildar/Deputy Jailor Examination 2006 the written examination of which has already been held on 24.02.2008 and further results are awaited. A true copy of the Admit Card of Naib Tehsildar/Deputy Jailor Examination 2006 in which the petitioner has appeared is annexed and marked as Annexure No.15 to

this writ petition.

(v) The petitioner has also applied in pursuance to Naib Tehsildar 2006 Examination as also for examination for conducting selection for the post of Tax Superintending, Assistant Tourist Officer and Sales Tax Officer issued by Public Service Commission, U.P. The petitioner is also an applicant for Provincial Civil Services (Preliminary) Examination 2010 notified by Advertisement No. A-1/E-1/2010 published in the newspaper Rozgar India. The relevant extract of which is annexed and marked as Annexure No. 16 to this writ petition.

14. The petitioner, therefore, by means of Writ Petition No. 14861 of 2010, has prayed for the following reliefs:-

1. issue a writ, order or direction in the nature of certiorari quashing the decision of Public Service Commission, U.P dated 28.06.2001 (Annexure No.9 to the writ petition) or alternatively declare such decision as inapplicable to the pending consideration proceedings in which the petitioner is an applicant.

2. a writ, order or direction of suitable nature commanding the respondents not to withhold the result of the petitioner with regard to any of the examinations detailed in paragraphs 29 of the writ petition in pursuance to the aforesaid decision dated 28.06.2001.

15. We have heard Sri Ashok Khare, counsel for the petitioner, and Sri Gautam Baghel who has appeared for the U.P. Public Service Commission, Allahabad and the Standing Counsel for the State-respondents. Sri Sunil Kumar was also heard for the Union Public Service Commission, New Delhi, as also the Standing Counsel for the Union.

16. The main question that arises for our consideration is whether the punishment of debarring the petitioner from appearing in all the examinations to be conducted and selections to be made by the Commission for a period of ten years with effect from 24.03.2008, was justified, particularly when the candidature of the petitioner for the Civil Services Examination, 2007, was already cancelled.

17. The order of punishment, as also the show cause notice dated 26.02.2008, places reliance on Rule 4 and Rule 14 of the Rules for the Civil Services (Main) Examination, 2007. The Rules 4 and 14 are being reproduced below:-

Rule 4. Every candidate appearing at the examination who is otherwise eligible, shall be permitted four attempts at the examination:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible:

Provided further that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be seven. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates.

Note:-

(i) An attempt at a Preliminary Examination shall be deemed to be an attempt at the Examination.

(ii) If a candidate actually appears in any one paper in the Preliminary Examination, he/she shall be deemed to have made an attempt at the Examination.

(iii) Notwithstanding the disqualification/cancellation of candidature, the fact of appearance of the candidate at the examination will count as an attempt.

Rule 14. A candidate who is or has been declared by the Commission to be guilty of:-

(i) Obtaining support for his candidature by the following means, namely:-

(a) offering illegal gratification to; or

(b) applying pressure on, or

(c) blackmailing, or threatening to blackmail any person connected with the conduct of the examination, or

(ii) impersonation; or

(iii) procuring impersonation by any person; or

(iv) submitting fabricated documents or documents which have been tampered with; or

(v) making statements which are incorrect or false or suppressing material information; or

(vi) resorting to the following means in connection with his candidature for the examination, namely:-

(a) Obtaining copy of question paper through improper means;

(b) finding out the particulars of the persons connected with secret work relating to the examination;

(c) influencing the examiners; or

(vii) using unfair means during the examination; or

(viii) writing obscene matter or drawing obscene sketches in the scripts; or

(ix) misbehaving in the examination hall including to boycott examination, provoking fellow examinees to boycott examination, creating a disorderly scene and the like; or

(x) harassing or doing bodily harm to the staff employed by the Commission for the conduct of their examination; or

(xi) being in possession of or using any mobile phone, pager or any electronic equipment or device or any other equipment capable of being used as a communication device during the examination; or

(xii) violating any of the instructions issued to candidates along with their admission certificates permitting them to take the examination; or

(xiii) attempting to commit or, as the case may be, abetting the commission of all or any of the acts specified in the foregoing clauses;

may in addition to rendering himself liable to criminal prosecution, be liable:-

(a) to be disqualified by the Commission from the Examination for which he is a candidate; and/or

(b) to be debarred either permanently or for a specified period:

(i) by the Commission, from any examination or selection held by them;

(ii) by the Central Government from any employment under them; and

(c) If he is already in service under Government to disciplinary action under the appropriate rules: Provided that no penalty under this rule shall be imposed except after:-

(i) giving the candidate an opportunity of making such representation in writing as he may wish to make in that behalf, and

(ii) taking the representation, if any, submitted by the candidate within the period allowed to him into consideration.

18. From a perusal of second Proviso to Rule 4, it is clear that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be 7. Rule 14 (v) provides that a candidate may be declared by the Commission to be guilty of making statements which are incorrect or false or for suppressing material information. Rule 14 further provides that when a candidate is or has been declared by the Commission to be guilty of the acts specified in Clause (i) to (xiii) of Rule 14 then in addition to rendering himself liable to criminal prosecution he might be liable: (a) to be disqualified by the Commission from the examination for which he is a candidate; and/or (b) to be debarred either permanently or for a specified period: (i) by the Commission, from any examination or selection held by them; and (ii) by the Central Government from any employment under them; and (iii) if he is already in service under Government to disciplinary action under the appropriate rules; provided that no penalty under these rules shall be imposed except after: (i) giving the candidate an opportunity of making such representation in writing as he may wish to make in that behalf; and (ii) taking the representation, if any, submitted by the candidate within the period allowed to him, into consideration.

19. Sri Ashok Khare has submitted before us that the Union Public Service Commission, as also the Central Administrative Tribunal had failed to notice that

the incorrect information given by the petitioner was due to inadvertence and not a deliberate or malicious act on the part of the petitioner. He contends that students undertake so many examinations spread over a considerable period of time, as in the present case, that many a times they tend to lose count of the number of attempts they have taken. In such a situation, he contends, the punishment of cancellation of candidature for the examination concerned may be sufficient, and that there was no justification to award the punishment of debarring the petitioner for ten long years from undertaking any examination or selection. He further contends that the punishment is shockingly disproportionate to the gravity of the misconduct, and is as such arbitrary.

20. Per contra, the respondents' counsels have submitted that the petitioner had deliberately made false statement so as to secure an attempt over and above the seven permissible attempts. They contend that fraudulent intention is, therefore, manifestly clear, and as such the punishment cannot be said to be shockingly disproportionate.

21. We have considered the submissions of the parties and have gone through the record. From the record we find that the Commission as well as the Tribunal have overlooked a very vital aspect of the matter. They failed to notice that if the petitioner had a fraudulent intention in hiding the number of attempts that he had taken in the Civil Services Examinations, he would not have, in his application form for the Main Examination, submitted that he had taken an attempt in the year 2001, when there was no such attempt, as is the own case of the Commission. This fact clearly discloses that the petitioner was truthful when he stated that due to inadvertence and forgetfulness he made an incorrect statement.

22. The Commission ought to have taken a realistic and a pragmatic view of the matter. These days on account of shortage of employment, and extremely competitive environment a candidate has to undertake sometimes twenty or thirty competitive examinations in a span of five or six years. Sometimes a candidate even half-heartedly appears in an examination on parental pressures. In this kind of a scenario losing count of the number of attempts that a person has taken is very much possible. Further, we would like to note that in the modern days of computerization hiding the number of attempts that a person has undertaken may not be possible, and the candidates are aware of this fact. Therefore it is not likely that they would deliberately suppress the number of attempts that they have taken. Accordingly, we find that the Union Public Service Commission has taken an extremely harsh view on the matter and the punishment is disproportionate to the inadvertent mistake committed by the petitioner.

23. The principle of proportionality has long been a subject matter of judicial pronouncements by the Apex Court as well as the High Courts. After examining the decisions of the Apex Court rendered in the cases of Union of India and another Vs. G. Ganayutham (Dead) by LR., ; Ranjit Thakur Vs. Union of India

(UOI) and Others, ; B.C. Chaturvedi Vs. Union of India and others, ; Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, ; Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, and several other cases, the Apex Court in the case of Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, , in paragraph Nos. 19 and 20, observed as follows:-

19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances" Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

24. The Supreme Court has recently in Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others, explained the principle of proportionality as a ground of judicial review in administrative action, while holding that the Wednesbury principle of reasonableness has not yet met with its judicial burial, in paragraph Nos. 36 to 39, as follows:-

Wednesbury and Proportionality -

36. Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to `assess the balance or equation" struck by the decision maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment test" so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a

state burial, with full honours is surely not to happen in the near future.

37. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

38. Leyland and Anthony on Textbook on Administrative Law (5th edn. OUP, 2005) at p.331 has amply put as follows:

Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in every day terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to reviewing the merits of a decision.

39. The Courts have to develop an infeasible and principled approach to proportionality till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the Court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision maker.

25. Applying the principle of proportionality, as noticed by us herein above, we find that the Union Public Service Commission has inflicted an extremely harsh punishment on the petitioner for an inadvertent mistake on his part in the declaration with respect to the number of attempts he had already taken for the Civil Services Examinations. Since, we have already found that the mistake in declaration was due to inadvertence and not motivated or mischievous, the punishment awarded by the Union Public Service Commission cannot withstand the test of proportionality. Ordinarily, where the punishment is found to be shockingly disproportionate, the matter is remanded back to the authority concerned to pass a fresh order. However, in the instant case, we find that the petitioner is not an employee, but is just a candidate, who is running from pillar to post in search of an employment, therefore, instead of remanding the matter back to the authority concerned, we are of the view that the ends of justice would be served by limiting the punishment to the cancellation of the candidature of the petitioner for the Civil Services (Main) Examination, 2007

only. We, accordingly, find that the punishment of debarring the petitioner from appearing in other examinations is unduly harsh and not justified. The Tribunal erred by not correcting the harsh punishment awarded by the Union Public Service Commission.

26. For the reasons mentioned above, the writ petition No. 11421 of 2011 is allowed. The order dated 21.12.2010 passed by the Central Administrative Tribunal, Allahabad is hereby quashed and set aside. The order dated 28.03.2008 passed by the Union Public Service Commission, New Delhi is set aside to the extent that it debars the petitioner from appearing in all the examinations to be conducted and the selections to be made by the Commission for a period of ten years with effect from 24.03.2008, however, the decision of the Commission to cancel the candidature for the Civil Services Examination, 2007 is confirmed and upheld.

27. The writ petition No. 14861 of 2010, challenging the decision of U.P. Public Service Commission dated 28.06.2001, is partly allowed to the extent of grant of prayer No.2, with directions to the U.P. Public Service Commission not to withhold the result of the petitioner with regard to any of the examinations in pursuance to the decision of the Union Public Service Commission dated 28.03.2008.

28. There shall be no order as to costs.

29. I agree.